

1 **SEC. 5. EXCEPTIONS TO PROHIBITED ACTS.**

2 (a) Subject to section 4(a)(ii), a lawful user of a
3 database made available to the public or placed in com-
4 mercial use is not prohibited from extracting, using or
5 reusing insubstantial parts of its contents, qualitatively or
6 quantitatively, for any purposes whatsoever.

7 (b) Nothing in this Act shall in any way restrict any
8 person from independently collecting, assembling or com-
9 piling works, data or materials from sources other than
10 a database subject to this Act.

11 **SEC. 6. DURATION OF PROHIBITIONS.**

12 (a) A database becomes subject to this Act when the
13 necessary investment has been made to qualify its maker
14 as such under section 2. The database shall remain subject
15 to this Act for a period of twenty-five years from the first
16 of January following the date when it was first made avail-
17 able to the public or the date when it was first placed in
18 commercial use, whichever is earlier.

19 (b) Any change of commercial significance, quali-
20 tatively or quantitatively, to a database, including any
21 such change through the accumulation of successive addi-
22 tions, deletions, reverifications, alterations, modifications
23 in organization or presentation, or other modifications,
24 shall make the resulting database subject to this Act for
25 its own term, as calculated under subsection (a).

1 **SEC. 7. CIVIL REMEDIES FOR VIOLATION OF SECTION 4.**

2 (a) CIVIL ACTIONS.—A database owner injured by a
3 violation of section 4 may bring a civil action for such a
4 violation in an appropriate United States district court
5 without regard to the amount in controversy: *Provided*
6 *however*, That any action against a State governmental en-
7 tity may be brought in any court that has jurisdiction over
8 claims against such entity.

9 (b) TEMPORARY AND PERMANENT INJUNCTIONS.—
10 Any court having jurisdiction of a civil action arising here-
11 under shall have the power to grant temporary and perma-
12 nent injunctions, according to the principles of equity and
13 upon such terms as the court may deem reasonable, to
14 prevent the violation of section 4. Any such injunction
15 granted upon hearing, after notice to the party sought to
16 be enjoined, by any district court of the United States,
17 may be served on the party against whom such injunction
18 is granted anywhere in the United States where such per-
19 son may be found, and shall be operative and may be en-
20 forced by proceedings in contempt or otherwise by any
21 United States district court having jurisdiction over such
22 party.

23 (c) IMPOUNDMENT.—At any time while an action
24 hereunder is pending, the court may order the impound-
25 ing, on such terms as it deems reasonable, of all copies
26 of contents of databases extracted and or used or reused

1 in violation of section 4, and of all masters, tapes, disks,
2 diskettes, or other articles by means of which such copies
3 may be reproduced. The court may, as part of a final judg-
4 ment or decree finding a violation of section 4, order the
5 remedial modification or destruction of all copies of con-
6 tents of databases extracted, used or reused in violation
7 of section 4, and of all masters, tapes, disks, diskettes,
8 or other articles by means of which such copies may be
9 reproduced.

10 (d) MONETARY RELIEF.—When a violation of section
11 4 has been established in any civil action arising here-
12 under, the plaintiff shall be entitled, subject to principles
13 of equity, to recover (i) defendant's profit, (ii) any dam-
14 ages sustained by the plaintiff, and (iii) the costs of the
15 action. The court shall assess such profits or damages or
16 cause the same to be assessed under its direction. In as-
17 sessing profits the plaintiff shall be required to prove de-
18 fendant's sales only; defendant must prove all elements of
19 cost or deduction claimed. In assessing damages the court
20 may enter judgment, according to the circumstances of the
21 case, for any sum above the amount found as actual dam-
22 ages, not exceeding three times such amount. If the court
23 shall find that the amount of the recovery based on profits
24 is either inadequate or excessive, the court may in its dis-
25 cretion enter judgment for such sum as it finds just. The

1 court in its discretion may award reasonable attorney fees
2 to the prevailing party.

3 (e) Subsections (b) and (c) shall not apply to any ac-
4 tion against the United States Government.

5 (f) The relief provided under this section shall be
6 available against a State governmental entity to the extent
7 allowed by applicable law.

8 **SEC. 8. CRIMINAL OFFENSES AND PENALTIES FOR VIOLA-**
9 **TION OF SECTION 4.**

10 (a) Any person who violates section 4 willfully, and—

11 (1) does so for direct or indirect commercial ad-
12 vantage or financial gain; or

13 (2) thereby causes loss or damage to a database
14 owner aggregating \$10,000 or more in any one-year
15 calendar period, shall be punished as provided in
16 subsection (b).

17 (b) An offense under subsection (a) shall be punish-
18 able by a fine of not more than \$250,000 or imprisonment
19 for not more than five years, or both. A second or subse-
20 quent offense under subsection (a) shall be punishable by
21 a fine of not more than \$500,000, imprisonment for not
22 more than ten years, or both.

23 **SEC. 9. RELATIONSHIP TO OTHER LAWS.**

24 (a) The remedies against violations hereunder shall
25 be without prejudice to any remedies under any copyright

1 that may subsist in the database, any contents of the
2 database, or the selection, coordination or arrangement of
3 such contents. Such remedies shall not limit, impair, or
4 otherwise affect the existence, scope or duration of protec-
5 tion under any such copyright.

6 (b) Nothing in this Act shall restrict the rights of
7 parties freely to enter into licenses or any other contracts
8 with respect to databases or their contents.

9 (c) Nothing in this Act shall prejudice provisions con-
10 cerning copyright, rights related to copyright or any other
11 rights or obligations in the database or its contents, in-
12 cluding laws in respect of patent, trademark, design
13 rights, antitrust or competition, trade secrets, data protec-
14 tion and privacy, access to public documents, and the law
15 of contract.

16 **SEC. 10. CIRCUMVENTION OF DATABASE PROTECTION SYS-**
17 **TEMS.**

18 No person shall import, manufacture or distribute
19 any device, product, or component incorporated into a de-
20 vice or product, or offer or perform any service, the pri-
21 mary purpose or effect of which is to avoid, bypass, re-
22 move, deactivate, or otherwise circumvent, without the au-
23 thority of the database owner or the law, any process,
24 treatment, mechanism or system which prevents or inhib-

1 its the extraction, use or reuse of the contents of the
2 database in violation of section 4 hereof.

3 **SEC. 11. INTEGRITY OF DATABASE MANAGEMENT INFOR-**
4 **MATION.**

5 (a) FALSE DATABASE MANAGEMENT INFORMA-
6 TION.—No person shall knowingly provide database man-
7 agement information that is false, or knowingly publicly
8 distribute or import for public distribution database man-
9 agement information that is false.

10 (b) REMOVAL OR ALTERATION OF DATABASE MAN-
11 AGEMENT INFORMATION.—No person shall, without au-
12 thority of the database owner or the law, (i) knowingly
13 remove or alter any database management information,
14 (ii) knowingly distribute or import for distribution
15 database management information that has been altered
16 without authority of the database owner or the law; or
17 (iii) knowingly distribute or import for distribution copies
18 of a database from which database management informa-
19 tion has been removed without the authority of the
20 database owner or the law.

21 **SEC. 12. CIVIL REMEDIES FOR VIOLATION OF SECTIONS 10**
22 **OR 11.**

23 (a) CIVIL ACTIONS.—Any person injured by a viola-
24 tion of section 10 or section 11 may bring a civil action
25 for such violation in an appropriate United States district

1 court, without regard to the amount in controversy: *Pro-*
2 *vided, however,* That any action against a State govern-
3 mental entity may be brought in any court that has juris-
4 diction over claims against such entity.

5 (b) POWERS OF THE COURT.—In an action brought
6 under subsection (a), the court—

7 (1) may grant temporary and permanent in-
8 junctions on such terms as it deems reasonable to
9 prevent or restrain a violation;

10 (2) at any time while an action is pending, may
11 order the impounding, on such terms as it deems
12 reasonable, of any device or product that is in the
13 custody or the control of the alleged violator and
14 that the court has reasonable cause to believe was
15 involved in a violation;

16 (3) may award damages under subsection (c);

17 (4) in its discretion may allow the recovery of
18 costs by or against any party other than the United
19 States or an officer thereof;

20 (5) in its discretion may award reasonable at-
21 torney's fees to the prevailing party; and

22 (6) may, as part of a final judgment or decree
23 finding a violation, order the remedial modification
24 or the destruction of any device or product involved
25 in the violation that is in the custody or control of

1 the violator or has been impounded under subsection
2 (ii).

3 (c) AWARDS OF DAMAGES.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this Act, a violator is liable for either (A)
6 the actual damages and any additional profits of the
7 violator, as provided by subsection (ii), or (B) statu-
8 tory damages, as provided by subsection (iii).

9 (2) ACTUAL DAMAGES.—The court shall award
10 to the complaining party the actual damages suf-
11 fered by him or her as a result of the violation, and
12 any profits of the violator that are attributable to
13 the violation and are not taken into account in com-
14 puting the actual damages, if the complaining party
15 elects such damages at any time before final judg-
16 ment is entered.

17 (3) STATUTORY DAMAGES.—

18 (A) At any time before final judgment is
19 entered, a complaining party may elect to re-
20 cover an award of statutory damages for each
21 violation of section 10 in the sum of not less
22 than \$200 or more than \$2,500 per device,
23 product, offer or performance of service, as the
24 court considers just.

1 (B) At any time before final judgment is
2 entered, a complaining party may elect to re-
3 cover an award of statutory damages for each
4 violation of section 11 in the sum of not less
5 than \$2,500 or more than \$25,000.

6 (4) REPEATED VIOLATIONS.—In any case in
7 which the injured party sustains the burden of prov-
8 ing, and the court finds, that a person has violated
9 section 10 or 11 within three years after a final
10 judgment was entered against that person for an-
11 other such violation, the court may increase the
12 award of damages up to triple the amount that
13 would otherwise be awarded, as the court considers
14 just.

15 (5) INNOCENT VIOLATIONS.—The court in its
16 discretion may reduce or remit altogether the total
17 award of damages in any case in which the violator
18 sustains the burden of proving, and the court finds,
19 that the violator was not aware and had no reason
20 to believe that its acts constituted a violation.

21 (d) Subsections (b) (i) and (ii) shall not apply to any
22 action against the United States Government.

23 (e) The relief provided under subsection (b) shall be
24 available against a State governmental entity to the extent
25 allowed by applicable law.

1 **SEC. 13. CRIMINAL OFFENSES AND PENALTIES FOR VIOLA-**
2 **TION OF SECTION 11.**

3 Any person who violates section 11 with intent to de-
4 fraud shall be fined not more than \$500,000 or impris-
5 oned for not more than five years, or both.

6 **SEC. 14. LIMITATIONS ON ACTIONS.**

7 No action shall be maintained under this Act unless
8 it is commenced within three years after the database
9 owner knew or should have known of the claim.

10 **SEC. 15. EFFECTIVE DATE.**

11 (a) This Act shall take effect immediately upon enact-
12 ment, and shall be applicable to acts committed on or after
13 that date.

14 (b) No person shall be liable under this Act for use
15 or reuse of database contents lawfully extracted from a
16 database, prior to the effective date of this Act, by that
17 person or by that person's predecessor in interest.

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APPENDIX E

U.S. COPYRIGHT OFFICE DATABASE MEETING PARTICIPANTS

ORGANIZATION

REPRESENTATIVE

1. Library Groups (March 12, 1997)

American Library Association	Adam Eisgrau Carol Henderson
Association of American Law Libraries	Robert Oakley
Association of Research Libraries	Prudence Adler
Medical Library Association	Mary Langman
Special Libraries Association	John Crosby

2. Video Software Dealers Association/Viacom (May 12, 1997)

Viacom	Thomas Polgar
Video Software Dealers Association	John T. Mitchell

3. Science Groups (May 12, 1997)

American Association for the Advancement of Science	Alexander Fowler Mark Frankel
American Meteorological Society	Keith Seitter
American Physical Society	Robert Park
Association for Computing Machinery U.S. Public Policy Office	Lauren Gelman
Defense Technical Information Center U.S. Dept. of Defense	Kurt Molholm R. Paul Ryan
International Council for Scientific Unions	Ferris Webster

ORGANIZATION**REPRESENTATIVE**

National Academy of Engineering	Jerome H. Reichman
National Imagery and Mapping Agency Office of the General Counsel U.S. Dept. of Defense	Jim Ayres Denise Webster
National Library of Medicine National Institute of Health	Harold Schoolman
National Oceanic and Atmospheric Administration Office of the General Counsel Office of Policy and Strategic Planning U.S. Dept. of Commerce	Kira Alvarez Chuck Wooldridge
National Research Council	Anne Linn
National Science Foundation Directorate for Geosciences Office of the General Counsel	Lou Brown Chris Ashley
Oceans, International Environmental and Scientific Affairs U.S. Dept. of State	Dorothy Bergamaschi
Office of Director Defense Research and Engineering U.S. Dept. of Defense	Col. Alan R. Shaffer
Office of Scientific & Technical Information U.S. Dept. of Energy	Sharon Jordan
Office of the Oceanographer of the Navy Naval Deputy U.S. Dept. of Commerce	Thomas Cuff
Science and Technical Library National Aeronautics and Space Administration	Roland Ridgeway
Smithsonian Institution Office of the General Counsel	Rachelle V. Brown
U.S. Dept. of Commerce	John Raubitschek

ORGANIZATION**REPRESENTATIVE**

U.S. Environmental Protection Agency
Office of the General Counsel

Alan Ehrlich
Thomas Mace

U.S. Geological Survey
Biological Resources Division
U.S. Dept. of the Interior

Gail Hodge
Joyce Mann
Justin P. Patterson
Larry Pettinger

4. Professor Jerome Reichman (May 13, 1997)**5. Educational Groups (May 13, 1997)**

American Association of Community Colleges

Christopher Dalziel

American Association of University Professors

Jonathan Alger

American Council of Learned Societies

Douglas Bennett

Association of American Colleges
and Universities

Joann Stevens

Association of American Universities

John Vaughn

Cal-Tech, Field Museum of Chicago

Todd Dickinson

Coalition for Networked Information

Joan Lippincott

National Association of State Universities
and Land Grant Colleges

Martha Winnacker

National Education Association

Carolyn Breedlove

6. Database Producers Supporting Legislation (May 14, 1997)

American Association of University Presses

Mindy Koyanis

American Medical Association

Jack Emery

Association of American Publishers

Allan Adler

ORGANIZATION**REPRESENTATIVE**

Coalition Against Database Piracy

Michael Klipper
Christopher Meyer

Cox Enterprises

Sandy Wilson

Dow Jones & Co.

Patrice Ettinger
David Wittenstein

Information Industry Association

William Ashworth
Daniel Duncan
Steven J. MetalitzManagement Association for Private
Photogrammetric Surveyors

Daniel L. Benson

The McGraw-Hill Companies

Cynthia Bradden

MDL Information Systems
Elsevier Science Company

Esther Allen

The NASDAQ Stock Market, Inc

Joel Wolfson

Proprietary Rights Counsel

Morton David Goldberg

R&D Magazine

Tim Studt

Reed Elsevier

Henry Horbaczewski

The Thomson Corporation

Michael Harris
Liz Robbins
Gerry Sikorski

Warren Publishing

Lynn Levine
Paul Warren**7. Database Producers Opposing or Not Supporting Legislation (May 14, 1997)**

American Association of Legal Publishers

Eleanor Lewis

American Statistical Association

John Gardinier

ORGANIZATION**REPRESENTATIVE**

Association of Directory Publishers

Claudia James
Theodore Whitehouse

Bell Atlantic

Sarah Deutsch

Dun & Bradstreet

Michael Brewer
Jean Cantrell

MCI Communications

Theresa Swinehart

McLeod USA Publishing Company

Randall Rings

Online Banking Association

Jonathan Band

STATS, Inc.

John Dewan
Andrew Deutsch

U.S. Telephone Association

Larry Clinton

8. Newspaper Association of America (May 20, 1997)E. Molly Leahy
Rene P. Milam**9. Professor Peter Jaszi (May 22, 1997)****10. National Association of Broadcasters (May 22, 1997)**

American Broadcasting Company

Charlene Vanlier

National Association of Broadcasters

Ben Ivins

11. Sun Microsystems (May 29, 1997)

Lowell Sachs

12. Science Database Producers and Users (June 10, 1997)

American Cyanamid

Dr. David Saarai

ORGANIZATION**REPRESENTATIVE**

Knight Ridder Information

Robert Simons

Liz Robbins Associates

Liz Robbins

Merck & Co.

Dr. Martha Quesada
Eric Allen

Proskauer Rose

Jon Baumgarten

R&D Magazine

Tim Studt

SmithKlein Beecham

Dr. Merrie Wise
Teresa Heckner**13. National School Board Association (June 12, 1997)**

August Steinhilber

14. Library Groups (June 13, 1997)

American Library Association

Adam Eisgrau

Association of American Law Libraries

Robert Oakley

Association of Research Libraries

Prudence Adler

Medical Library Association

Mary Langman

Special Libraries Association

John Crosby

15. American Telephone & Telegraph (June 18, 1997)Marilyn Cade
Michele Farber
Liz Gasster**16. Michael J. Remington (June 30, 1997)**